

**FUNERAL DIRECTORS EXAMINING BOARD
MINUTES
MADISON, WISCONSIN
MAY 18, 1999**

PRESENT: Roy Pfeffer, Rick Unbehaun, Daniel Densow, W. Robert Cress

ABSENT: Peter Schils

STAFF PRESENT: Cletus Hansen, Jacquelynn Rothstein, Becky Fry; other Department and Division of Enforcement staff were present for portions of the meeting.

GUESTS: Kim Richardson, Fortis Family
Janet Vick, FSA
Ashley Moore, FSA
Peter C. Christianson, Quarles & Brady
Bill Cress, FSA
Christine Jacob, FSA
Mark Paget, WFDA
Janet Koenig, Cornerstone
Mark Aaroen, Murray Community FHS
Mark Krause, FSA
James Van Dyke, Abbit Management Corporation
Mark Lipscomb, Wis. Burial Vault Assoc.
Joel Despain, WISC Channel 3

CALL TO ORDER

The meeting was called to order at 9:41 a.m. by Roy Pfeffer, Chair. A quorum of four members was present.

AGENDA

The agenda was amended to include item 5 c – concerning a legislative sponsor for the Certificate of Good Standing Bill; an addition under closed session, concerning the Funeral Director's Examining Board being a co-complainant in a cemetery issue; and an addition to 16 e – concerning a pending application.

MOTION: Rick Unbehaun moved, seconded by Daniel Densow, to adopt the agenda as amended. Motion carried unanimously.

MINUTES (03/16/99)

MOTION: Daniel Densow moved, seconded by Rick Unbehaun, to approve the minutes with a correction to page 4 removing the "e" from the name Harvey I. Lapine. Motion carried unanimously.

ADMINISTRATIVE REPORT

Secretary Cummings' Report

Regulation of Funeral Homes and Cemeteries

Secretary Cummings informed the Board of the recommendations of the Cemetery Task Force. She reviewed the Evergreen Cemetery situation in regards to maintenance and the inadequacy of laws to enforce maintenance issues. Secretary Cummings stated some of the responsibilities of the Department are to create an adequate definition of a cemetery, to make sure the consumers are safe, their health is preserved, and they enjoy a degree of economic well-being.

Secretary Cummings explained her reason for proposing a combined board, consisting of representatives of licensed funeral directors, cemeterians, and members of the public. Secretary Cummings and the Board discussed the regulation of cemeteries and funeral directors in relation to the proposed combined board.

The Board discussed the importance of the 100% trusting law for funeral directors and recommended that the trusting for cemeterians be increased to 100%.

Secretary Cummings asked the Board to discuss and report back to her on trusting issues, the definition of cemeteries, the criteria of a small and a large cemetery, and the feasibility of a combined board. She asked Roy Pfeffer to contact the American Cemetery Association for their definition of a cemetery.

Secretary Cummings referred to the public hearing to be held on May 19, 1999, on the SB69. Clete Hansen informed the Board that Myra Shelton has conveyed the Board's support of that bill to the Senate Committee.

The Board explained that technology and equipment are available for winter burials.

The Wisconsin Funeral Directors Association and The Funeral Service Alliance of Wisconsin reported they support a requirement for winter burials.

Bureau Director's Report

Board Member Roster

The Board received an updated roster. The Board advised Clete Hansen of some minor changes to the roster; Roy T. Pfeffer's expiration date is 7/1/2003 and Diane Pratt's name should be removed.

1999 Meeting Dates

The Board received a list of the 1999 meeting dates.

Regulatory Digest

The Regulatory Digest is ready to go out, dated June 1999 rather than May 1999.

To Pass Folder

The Board received a copy of the spring 1999 Conference Report.

Information was circulated in the To Pass Folder and duly noted.

LEGISLATIVE UPDATE

Regulation of Crematories

Daniel Densow informed the Board that the draft relating to the regulation of crematories will be ready for review by the July meeting.

Cemetery Task Force

Clete Hansen reported that Pete Gunderson is the official representative of the Wisconsin Funeral Directors Association and Bill Cress is the official representative of the Funeral Service Alliance.

The Board addressed three issues that affect funeral directors. The first issue pertains to a combined board.

MOTION: Rick Unbehaun moved, seconded by Daniel Densow, to recommend to Secretary Marlene Cummings that she propose the creation of a cemetery regulatory board, rather than an advisory board, that the Funeral Directors Examining Board remain as is, and that she not propose the combined board. Motion carried unanimously.

The Board discussed the amendment of s. 445.125(1) regarding the decrease of 100% trusting to 40%.

MOTION: Daniel Densow moved, seconded by Robert Cress, to disagree with the recommendation to decrease the funeral director trusting to 40% and suggest that the trusting by cemeterians be raised to 100%. Motion carried unanimously.

The Board discussed the draft issue regarding a funeral director not being an employee or serving on the board of directors of a cemetery. Jacquelynn Rothstein reviewed section 157.067(2) and 445.12(6) of the Wisconsin Statutes regarding funeral directors and cemetery affiliations.

A Funeral Service Alliance representative said the association would not support the change.

MOTION: Daniel Densow moved, seconded by Rick Unbehaun, to oppose the recommendation, to uphold the present law that no funeral directors can be on a cemetery board and to recommend no changes. Motion carried unanimously.

The Board asked Clete Hansen, on the behalf of the Board, to write a letter to Secretary Cummings regarding the Board's position on three issues that affect funeral directors.

Sponsor of Bill Relating to Certificate of Good Standing

Clete Hansen informed the Board that a sponsor has not been obtained, however, Myra Shelton is working on finding a sponsor for the bill.

ADMINISTRATIVE RULES

Update on Rule: FD 6

Clete Hansen informed the Board that the draft was sent to legislative committees, and it should become effective around August 1st.

MOTION: Robert Cress moved, seconded by Rick Unbehaun, to give Clete Hansen authorization to sign the order, if there are no changes, to move the process on. Motion carried unanimously.

LICENSING ISSUES

Funeral Director in Charge of More Than One Funeral Home

Clete Hansen informed the Board the Schramka Funeral Homes may not be in complete compliance; however, the issue will be addressed when they file new applications.

Application for Funeral Establishment

Board members received a copy of the revised application form, a memo from Clete Hansen regarding the application for funeral establishment and a letter from Rick Unbehaun. Members of the Board indicated minor changes needed on the application.

The Board discussed OSHA requirements relating to eye washers and drench showers.

MOTION: Daniel Densow moved, seconded by Rick Unbehaun, to recommend an amendment be made to item 18 on the application to include eye washers and a drench shower in the preparation room for funeral establishments as opposed to embalming rooms, and include language to be in compliance with OSHA requirements. Motion carried unanimously.

The Board received a copy of the March 17, 1999 letter from the Hamilton Group relating to its acquisition of the stock of Charon Holdings Corporation and Charon Wisconsin Corporation and

the March 30, 1999 letter relating to its acquisition of the stock of Independent Mortuary Corporation.

The Board discussed the application review process for change of ownership and new establishment applications.

EXAMINATION ISSUES

Nothing to report.

BOARD MEMBER ACTIVITY

Nothing to report.

REPORT OF THE ADVISORY COMMITTEE ON FUNERAL DIRECTORS APPRENTICESHIP ISSUES

Clete Hansen reported that after the June 14, 1999 meeting of the Funeral Director Apprentice Advisory Committee he will put together all of the recommendations for statutory or rule changes and procedural changes, for the Board's review.

LEGAL OPINION RE: FUNERAL DIRECTORS ON CEMETERY BOARDS

Jacquelynn Rothstein submitted a written opinion, dated May 18, 1999.

MASTER TRUST PROGRAMS FOR BURIAL AGREEMENTS

Jacquelynn Rothstein reviewed the March 1, 1999 letter from Harvey Lapin, to establish a Master Trust Program for Wisconsin Funeral Directors and brought up several items of concern.

James Van Dyke, representing Abbit Management Corporation, addressed the items of concern. He assured the Board that a written response to these concerns would be forthcoming from Harvey Lapin.

Jacquelynn Rothstein recommended that the Board table this item until a written response is received from Abbit Management Corporation and additional information is received from the Department of Financial Institution.

Clete Hansen encouraged the Board to be aware that any other plan proposed for such a program should follow the same rules.

Mark Paget, executive director of Wisconsin Funeral Directors Association, informed the Board that the master trust program they are sponsoring has been approved by the Department of Financial Institution and they have addressed each of Jacquelynn Rothstein's concerns.

MISCELLANEOUS CORRESPONDENCE/INFORMATION

FTC Activities

The Board received handouts and discussed items related to the Federal Trade Commission (FTC) Trade Regulation Rule on Funeral Industry Practices. The Board recommended a change in the definition of Funeral Provider.

MOTION: Daniel Densow moved, seconded by Rick Unbehaun, requesting Clete Hansen to send a letter to the Federal Trade Commission before the July 12, 1999 deadline, to recommend changing the word “and” to “or” in the definition of funeral provider. Motion carried unanimously.

Spring District 6 Meeting

The Model Endorsement Plan was tabled for later discussion.

NEW BUSINESS

Nothing to report.

PUBLIC COMMENTS

Comments were noted relating to the Federal Trade Commission law.

RECESS TO CLOSED SESSION

MOTION: Daniel Densow moved, seconded by Robert Cress, to convene the meeting in Closed Session pursuant to Sections 19.85(1)(a), (b), and (f), Wis. Stats., to consider the licensing or discipline of a person licensed by the Board or the investigation of charges against such a person. Specifically, to discuss the issue of case status reports, case closings, monitoring issues, reinstatement requests, extension requests, examination challenges, deliberations on stipulations that may be signed after printing of the agenda, pending applications, and disciplinary proceedings. Motion carried unanimously by a roll call vote: Robert Cress-yes; Daniel Densow-yes; Rick Unbehaun-yes; Roy Pfeffer-yes.

Open Session recessed and the Closed Session convened at 12:28 p.m.

CLOSED SESSION

The Board deliberated on issues relating to case closings, stipulations, and disciplinary matters and consulted with legal counsel and Assistant Attorney General Bruce Olson.

RECONVENE IN OPEN SESSION

MOTION: Rick Unbehaun moved, seconded by Daniel Densow, to reconvene in Open Session at 2:04 p.m. Motion carried unanimously.

VOTING ON ITEMS CONSIDERED OR DELIBERATED UPON IN CLOSED SESSION

MOTION: Daniel Densow moved, seconded by Robert Cress, to require Andrew R. Benjamin to take the law portion of the exam and complete 15 continuing education units for reinstatement of application. Motion carried unanimously.

MOTION: Rick Unbehaun moved, seconded by Daniel Densow, to close case 98 FDR 035, Roman Jungers, with a letter of explanation to cease and desist with no violation. Motion carried unanimously.

MOTION Daniel Densow moved, seconded by Rick Unbehaun, to direct legal counsel to send a letter to Bill Conley with copies to SCI Wisconsin Funeral Services Inc., and Bruce Olson, indicating their licenses are presently on hold and will not be renewed unless and until they are in compliance with the law, and any existing SCI establishments that have already been renewed will be referred to DOE for further action. Motion carried unanimously.

MOTION: Robert Cress moved, seconded by Rick Unbehaun, to extend the apprenticeship of Michael J. Koenig, effective May 18, 1999 through September, 2000. Motion carried unanimously.

SUCH OTHER ITEMS AS AUTHORIZED BY LAW

Clete Hansen informed the Board that Secretary Cummings is going to register in favor of the winter burial bill.

ADJOURNMENT

MOTION: Rick Unbehaun moved, seconded by Robert Cress, to adjourn the meeting at 2:21 p.m. Motion carried unanimously.